

Federal Court



Cour fédérale

**Date: 20180607**

**Docket: IMM-4513-17**

**Citation: 2018 FC 590**

**Ottawa, Ontario, June 7, 2018**

**PRESENT: The Honourable Madam Justice Walker**

**BETWEEN:**

**SACAADA MAHAMAD HADI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Sacaada Mahamad Hadi, seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada dated October 2, 2017. The RPD found that the Applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD denied the Applicant's claim on the

basis that she had failed to establish her identity. Further, pursuant to subsection 107(2) of the IRPA, the RPD found that there was no credible basis for the Applicant's claim.

[2] For the reasons that follow, I find that the RPD made no reviewable error in concluding that the Applicant failed to establish her identity. Its decision, when read as a whole, was reasonable in this regard. However, there was some evidence before the RPD that was potentially capable of establishing the Applicant's claim and the RPD's finding that there was no credible basis for the Applicant's claim was unreasonable.

## II. Background

[3] The Applicant claims to be a citizen of Somalia and a member of the minority Yibir tribe. She has been widowed since 1991 and does not have any children. The Applicant is illiterate and has never held a Somali passport or other identity document.

[4] In April 2016, the Applicant was approached by two representatives from Al Shabaab requesting the use of her house to store weapons and to hide men. Fearing government reprisals for any involvement with Al Shabaab, the Applicant decided to leave Somalia. She sold her house to raise money and travelled to Kenya on May 15, 2016. She stayed in Kenya with a Somali citizen for a number of months. The Applicant then decided to leave Kenya and came to Canada with the assistance of a smuggler, Mr. Hassan. The Applicant states that she arrived in Canada with Mr. Hassan on August 21, 2016 using a non-genuine Australian passport in the name of Fathia Mohamoud.

[5] The Applicant filed her claim for refugee protection on October 14, 2016.

### III. Minister's Intervention

[6] The Minister of Citizenship and Immigration Canada [Minister] intervened in the Applicant's claim on November 15, 2016.

[7] The Minister submitted that the Applicant had failed to prove her identity. Searches of the Canada Border Services Agency [CBSA] Integrated Customs Enforcement System [ICES] had revealed no record of any person with the name Fathia Mohamoud entering Canada within the last 10 years, which called into question the Applicant's identity and credibility. Further, ICES revealed no record of an individual with the name Sacaada Mahamad Hadi entering Canada between August 18, 2016 and August 25, 2016, which called into question the Applicant's declared identity. Finally, the Minister submitted that the Applicant's lack of any identity documents also called into question her identity.

### IV. Decision under Review

[8] The RPD heard the Applicant's claim on September 25, 2017 and dismissed the claim in its decision dated October 2, 2017.

[9] The RPD found that the determinative issue in the case was identity. The RPD framed the issue as follows:

The main issue in this case is identity. The claimant is required to provide documents establishing her identity and other elements of

the claim. This is a mandatory provision [*Refugee Protection Division Rules*, SOR/2012-256, Rule 11 [RPD Rules]]. If a claimant does not provide such documents, then they must explain why that is, and what steps they took to obtain the documents. The Refugee Protection Division is required under the IRPA to take into account, when assessing the credibility of the claimant, whether the claimant possesses acceptable documentation establishing his or her identity. If the claimant has not, the panel is required to consider whether the claimant has provided a reasonable explanation for the lack of documentation or what steps the claimant has taken to acquire such documentation [IRPA section 106].

[10] The RPD concluded that the Applicant had not provided sufficient documentation to establish her personal identity (name and date of birth), her identity as a citizen of Somalia or her identity as a member of the Yibir tribe. In so doing, the RPD made a number of adverse credibility findings which the Applicant contests in this application. In addition, the RPD gave no weight to a letter [DB Letter] submitted by the Applicant from a non-profit organization, Dejinta Beesha, which assists persons from Africa in establishing their citizenship. Pursuant to subsection 107(2) of the IRPA, the RPD also concluded that there was no credible basis for the Applicant's claim.

#### V. Issues

[11] This application for judicial review raises the following issues:

1. Was the RPD's assessment of the Applicant's identity and credibility reasonable?
2. Was the RPD's treatment of the DB Letter procedurally fair?
3. Did the RPD err in concluding that the Applicant's claim had no credible basis?

## VI. Standard of Review

[12] It is well established that the RPD's findings regarding the Applicant's credibility are to be reviewed by this Court on a standard of reasonableness (*Behary v Canada (Minister of Citizenship and Immigration)*, 2015 FC 794 at para 7 [*Behary*]; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 22 [*Rahal*]; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4, 160 NR 315 (FCA)). The review of a tribunal's credibility findings against a standard of reasonableness requires the reviewing court to give significant deference to the findings of the tribunal, recognizing that "the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence" (*Rahal* at para 42).

[13] The Applicant argues that the RPD breached the Applicant's right to procedural fairness in its treatment of a discrepancy between two versions of the DB Letter before the panel. The Court is required to review issues of procedural fairness for correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34 [*Canadian Pacific*]). The Court must assess whether the process followed by the RPD was fair to the Applicant in the circumstances of her case. The Federal Court of Appeal in *Canadian Pacific* stated (at para 54):

A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. I agree with Caldwell J.A.'s observation in

*Eagle's Nest* (at para. 21) that, even though there is awkwardness in the use of the terminology, this reviewing exercise is “best reflected in the correctness standard” even though, strictly speaking, no standard of review is being applied.

## VII. Legislative Background

### *Immigration and Refugee Protection Act, SC 2001, c 27*

#### **Claimant without Identification**

##### **Credibility**

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

[...]

##### **No Credible Basis**

107(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

#### **Étrangers sans papier**

##### **Crédibilité**

106. La Section de la protection des réfugiés prend en compte, s’agissant de crédibilité, le fait que, n’étant pas muni de papiers d’identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n’a pas pris les mesures voulues pour s’en procurer.

[...]

##### **Preuve**

107(2) Si elle estime, en cas de rejet, qu’il n’a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l’absence de minimum de fondement de la demande.

***Refugee Protection Division Rules, SOR/2012-256***

**Documents**

11. The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.

**Documents**

11. Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.

VIII. Analysis

A. *Was the RPD's assessment of the Applicant's identity and credibility reasonable?*

[14] The issue of identity is fundamental to a claim pursuant to either section 96 or section 97 of the IRPA and the determination of identity is at the core of the expertise of the RPD. The Court in *Rahal* described the deference to be given to credibility determinations of the RPD as follows (at para 48):

The issue of identity is at the very core of the RPD's expertise, and here, of all places, the Court should be cautious about second-guessing the Board. In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly specious) and provided there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record, the RPD's determination on identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence.

[15] The onus rests on an applicant to establish his or her identity on a balance of probabilities. The applicant is required to provide acceptable documentation establishing

identity, failing which the applicant must explain why they do not have such documentation and what steps they took to obtain the documentation (section 106 of the IRPA; RPD Rule 11).

[16] The Applicant provided very little documentation regarding her identity. The evidence before the RPD consisted of the Applicant's Basis of Claim [BoC], two versions of the DB Letter and the Applicant's testimony. The difference between the two versions of the DB Letter was in the description of the process by which Dejinta Beesha assessed the Applicant's Somali nationality. The DB Letter addressed the Applicant's nationality and referred to her statement that she was a member of the Yibir clan. The only evidence before the RPD regarding the Applicant's personal identity was her BoC and testimony at the hearing.

(1) Personal Identity of the Applicant

[17] The RPD found that the Applicant had not established her personal identity (name and date of birth). The RPD made the following findings:

- (a) The Applicant used a false name, Fathia Mohamoud, when entering Canada at a time when she could have provided her own name. The Applicant arrived in Canada following a number of months in Kenya and a carefully planned trip from Kenya to Canada. She was not fleeing from persecution in Somalia. She did not need to use a false name to avoid detection. The RPD found that there was no reason for her failure to use her real name and drew a negative credibility inference from her use of the fabricated name.



- (b) The Applicant provided both the name under which she filed her claim, Sacaada Mahamad Hadi, and the name under which she entered Canada, Fathia Mohamoud, seven weeks after her entry into Canada and with the assistance of an individual of her choice. The Applicant had received legal advice. She did not give the names to Canadian authorities under stress at a port of entry. Therefore, there was no reason to doubt the accuracy of the names given by the Applicant. Nothing in her application indicated there might be alternate spellings of either name.
- (c) The Minister's evidence established that the Applicant did not enter Canada under the name Fathia Mohamoud as she alleged in her sworn evidence. The RPD drew a negative credibility inference as a result of this finding. Further, as the Applicant lied about entering Canada as Fathia Mohamoud at a time when she had no need to do so, the RPD rejected the Applicant's evidence that her real name is Sacaada Mahamad Hadi.
- (d) The Applicant provided no evidence regarding her real name. The RPD stated that there were "no witnesses, no photos, no letters and simply nothing at all other than her testimony to support her evidence as to her true personal identity". The RPD acknowledged that identity documents were difficult to obtain in Somalia but stated that the Applicant could have accessed some identity documents in Somalia notwithstanding she is illiterate. The RPD referenced her ability to sell her land and make all the arrangements for her departure to Kenya and, subsequently, her trip to

Canada. The RPD did not accept the Applicant's evidence that she fled Somalia in fear resulting in her lack of documentation.

- (e) The RPD noted that, when asked if the Applicant had any photos of family, friends or relations which might assist in proving her identity, the Applicant stated she did not bring anything with her. Rather, she sold her home and simply left. The RPD found this answer did not coincide with the fact that there were 20 days between the date she was approached by Al Shabaab and the date she left Somalia. The panel stated that the Applicant was evasive when asked about supporting documentation from Somalia. Although illiterate, the Applicant was able to sell her house in Somalia, arrange travel to and accommodation in Kenya, investigate and assess the making of a refugee claim in Kenya, and plan a voyage to Canada.
- (f) The RPD questioned the Applicant's failure to call any witnesses in support of her claim, particularly the individual with whom she was staying in Toronto. The RPD drew a negative inference from the Applicant's failure to call this individual and from the Applicant's explanation as to why she had not done so. The RPD also rejected the Applicant's explanation that she did not know what was required of her despite having received legal advice.

- (g) The RPD found that, even if the Applicant was not able to access Somali identity documents, the Applicant made no effort to provide evidence of her true name.

[18] In *Rahal*, this Court provided a detailed analysis of its role in reviewing credibility assessments by the RPD, emphasizing the role of deference “provided there is no glaring inconsistency between the Board’s decision and the weight of the evidence in the record” (*Rahal* at para 48). The Court also considered the approach required in reviewing an RPD decision which involved numerous credibility findings (*Rahal* at para 50):

In the Decision, the RPD premised its identity finding on several interrelated facts. Therefore, it is erroneous to seize on a few of them — as the Applicant has done — and try to argue that the alleged errors warrant intervention by the Court. Rather, the required approach is much more holistic: the Court must examine all the reasoning on the point in its totality in light of the record to evaluate whether the Board's conclusion is reasonable.

[19] I find that the conclusion of the RPD that the Applicant failed to establish her personal identity was reasonable when considered in its entirety. While I have concerns with certain inferences drawn by the panel as a result of its negative assessment of the Applicant’s credibility, there are no glaring inconsistencies between the RPD’s conclusions and the evidence before it.

[20] The Applicant was required to provide documentation in support of her identity. Failing such documentation, she was required to give a credible explanation for the lack of documentation and to describe any steps she took to obtain it. The Applicant failed to meet these requirements. The Applicant provided no formal or other documentation, letters, travel invoices, boarding passes or photos. She called no witnesses to assist in establishing her identity. The

Applicant's testimony was the only evidence before the RPD regarding her personal identity and the RPD found that her explanation for her lack of identity documentation was not credible.

[21] The RPD provided detailed reasons for its negative credibility findings. The Applicant has raised concerns with certain of the findings, discussed below. However, she has not refuted the factual findings of the RPD regarding the circumstances of the Applicant's journey from Somalia to Canada (via Kenya) that led the panel to question the Applicant's explanation of her lack of any documentation. It is this fact pattern which was determinative in the RPD's conclusion that the Applicant's explanation, that she fled Somalia in fear, was not credible. The RPD's assessment of the Applicant's credibility in explaining the absence of any official or personal documentation is directly within its competence and is owed significant deference. The RPD's conclusion was reasonable given the evidence before it.

[22] The RPD assessed two aspects of the Applicant's lack of documentary evidence. First, the panel found that, although difficult, the Applicant could have accessed some Somali identification documents. In this regard, I note that the RPD was not focussed only on whether the Applicant had a Somali passport or birth certificate. The RPD was looking for any type of Somali identity document:

Counsel for the claimant asked the claimant if she had a birth certificate, driver's license, death certificate, driver's license, school documents, documents to sell vegetables, or other documents to do business. The claimant stated in evidence that she had none of these documents.

[23] The Applicant submits that the RPD's finding ignores the country condition evidence that many Somali nationals were never given or required identity documents. The evidence before the RPD confirmed the Applicant's explanation for her lack of official identity documents.

[24] However, the RPD's conclusion regarding the Applicant's lack of official documentation was not determinative to its decision. The panel noted that "even if she was not able to access identity documents in Somalia, she made no effort to provide evidence as to her true name". The second aspect of the Applicant's lack of documentary evidence addressed by the RPD was her explanation as to why she had no personal documents, photographs or letters which would bolster her identity claim. As stated above, the RPD did not accept the Applicant's argument that she left Somalia under urgent threat of persecution. She arranged the sale of her property. She had time to prepare and pack for her departure. Once in Kenya, she had time to consider her options and plan her trip to Canada. The RPD reasonably found that the Applicant's retention of no documentation whatsoever from Somalia, from her trip to and stay in Kenya, or from her trip to and life in Canada, was not credible.

[25] The RPD drew a negative credibility inference from the fact the Applicant did not provide evidence from the woman with whom she stayed in Kenya and from her failure to call as a witness the woman with whom she was living in Toronto. The Applicant submits that these women did not know her in Somalia and could not provide any useful testimony regarding her identity. The Respondent argues that the woman in Kenya would have been able to verify the dates the Applicant lived in Kenya and the name she used while living in Kenya. With respect to the woman in Toronto, the Respondent states the Applicant testified that she did not ask the

woman to attend as a witness and that the woman was frequently ill not, as she now submits, that the individual did not know the Applicant in Somalia.

[26] The fact that the two women in question did not know the Applicant in Somalia does not address the RPD's concerns regarding the absence of any evidence from these individuals. Both of the women could have supplied information to the RPD regarding the Applicant's name she commonly used and the dates of the Applicant's travel. In the absence of any documentary evidence, the two women would have been clear candidates to assist in corroborating the Applicant's testimony. Her argument that she could not have known that their evidence would be required is not persuasive. The RPD did not err in considering the absence of evidence from these witnesses in its determination of whether the Applicant provided an explanation for her lack of identity documentation.

[27] The Applicant argues that the RPD erred in drawing a negative credibility inference from the fact that the Applicant used a false name to enter Canada. The Applicant submits that she did not have a Somali passport and that she was fleeing persecution in Somalia. Although she stayed in Kenya, she had no legal status and was at risk of forced return to Somalia. The Applicant relies on the case of *Gulamsakhi v Canada (Minister of Citizenship and Immigration)*, 2015 FC 105 [*Gulamsakhi*]. In *Gulamsakhi*, the Applicant fled Afghanistan to Pakistan using an Afghani passport and, with the assistance of a smuggler, used forged Pakistani documents to enter Canada. The Court stated (at para 9):

Moreover, this Court has repeatedly cautioned against drawing negative conclusions based on the use of smugglers and forged documents to escape violence and persecution. Travelling on false documents or destroying travel documents is of very limited value

as a determination of the claimant's credibility: *Attakora v. Canada (Minister of Employment & Immigration)* (1989), 99 N.R. 168 (Fed. C.A.) [*Attakora*]. This is partly because it is not uncommon for a person fleeing persecution to follow the instructions of the person(s) organizing their escape: *Rasheed v. Canada (Minister of Citizenship & Immigration)*, 2004 FC 587 (F.C.) at para 18, citing *Attakora*.

[28] The Applicant's argument disregards the RPD's critical finding that the Applicant was not fleeing persecution at the time she sought entry to Canada. The RPD analyzed the Applicant's journey to Canada through Kenya and noted the deliberate, planned steps the Applicant took in making her arrangements. While I agree with the Applicant's submission that the RPD incorrectly characterized the Applicant's actions as forum shopping, the RPD's analysis of her use of a fabricated name was reasonable.

[29] The Applicant also submits that the RPD erred in relying on the Minister's search for individuals entering Canada under the name Fathia Mohamoud. She states that the RPD did not consider the fact the Applicant is illiterate and had no way of knowing how the name used on passport was spelled. Neither she nor the person assisting her in filling out her application could have anticipated that the precise spelling of the name would become an issue. She submits that the panel also erred in finding that she was responsible for filling out the form, as a CBSA agent and a Somali interpreter assisted her.

[30] The RPD provided reasons for its conclusion that neither the Minister nor the RPD had any reason to doubt the accuracy of the spelling of the name Fathia Mohamoud. The Applicant provided the name with assistance from a person of her choice, a representative of a non-governmental organization. The CBSA agent did not help the Applicant to complete the form

other than to ensure the form was complete. It was not his role to query the spelling of information provided to him or to alert the Applicant and her representative of the consequences of any misspelling. It was the Applicant's responsibility to provide accurate information. The RPD's reasons and conclusion are supported by the evidence.

[31] The RPD rejected the Applicant's evidence regarding her real name, Sacaada Mahamad Hadi, based on its conclusion that she lied about entering Canada under the assumed name. The Applicant argues that the panel was engaging in linear reasoning and closed itself off from properly considering the Applicant's other evidence. I agree with the Applicant in this regard. The RPD ought to have independently considered the Applicant's testimony regarding her real name. Its conclusion that she provided no evidence regarding her name and birth date disregards her sworn testimony. Notwithstanding the RPD's error, the fact remains that the Applicant did not satisfy the requirements of section 106 of the IRPA and RPD Rule 11. Her lack of any documentation establishing identity was not overcome by a credible explanation.

## (2) Tribal Identity

[32] The RPD rejected the Applicant's claim to be a member of the Yibir tribe due to her inconsistent testimony. The Applicant stated she was from the Yibir tribe in her BoC. In her testimony, she stated she was from the Yibir Bucur Bacayir tribe. The RPD did not accept her explanation that the inconsistency arises from the fact that "Yibir" is the short form of her tribe's name. The RPD also referred to the DB Letter which referenced only the Yibir tribe.



[33] I agree with the Applicant that the RPD's rejection of her claim to be a member of the Yibir tribe was unreasonable. The RPD referenced only the fact that the Applicant had not mentioned the Bucur Bacayir sub clan in her BoC and that the DB Letter spoke of the Yibir tribe.

[34] The Applicant testified at the hearing about her clan lineage, making it clear that Bucur Bacayir was a sub clan of Yibir. She briefly explained the Somali clan and sub clan lineage. The Applicant's counsel referred the RPD to a number of Response to Information Requests that discuss the complexity of Somali tribal affiliations. The RPD provided no substantive explanation of its conclusion on this issue.

### (3) Nationality

[35] The RPD found that the Applicant had not established her nationality as a citizen of Somalia. The RPD discounted the Applicant's testimony at the hearing regarding her Yibir tribe, home city, government and other information on the basis that it could have been learned for purposes of the hearing. The RPD afforded the DB Letter no weight.

[36] The DB Letter concluded that the Applicant was born in Afgoye, Somalia. This conclusion was based on an oral interview during which the Applicant was questioned in the Somali language about Somali history, heritage, geography, clan lineage and culture. The RPD discounted the conclusion reached in the DB Letter based on the fact that there were two versions of the DB Letter in the record. The first version indicated that the Applicant completed an application and answered a questionnaire for Dejinta Beesha. The second version stated that the Applicant was an older person who could not read or write and had only undergone an oral

assessment. Based largely on this contradiction in the two versions of the letter, the RPD gave it no weight.

[37] The Applicant submits that the RPD erred in its analysis of her nationality by not giving proper consideration to the DB Letter or to the Applicant's testimony demonstrating knowledge of Somali history, culture, geography and politics.

[38] The Respondent concedes that the RPD erred in its treatment of the DB Letter but argues that the error did not extend to any other finding that was based on the letter. In particular, the Respondent argues that the RPD's treatment of the DB Letter did not impact its finding that the Applicant may have learned the information she provided to the RPD and Dejinta Beesha in preparation for her claim.

[39] I find that the RPD's treatment of the DB Letter was not reasonable. The Applicant provided a clear explanation for the inconsistency in the two versions of the letter. A boilerplate paragraph regarding client evaluation was not amended in the first version of the letter. The error was corrected prior to the hearing to refer to the oral assessment of the Applicant. The substantive conclusion by Dejinta Beesha regarding the Applicant's Somali nationality was unchanged.

[40] The RPD noted that the DB Letter did not state why the Applicant should be regarded as from the Yibir tribe. This is true. However, the DB Letter did not purport to establish that the Applicant was from the Yibir tribe. The letter stated only that she attested to this fact. The RPD

erred in relying on a lack of supporting evidence in the DB Letter regarding the Applicant's clan affiliation to further diminish its probative value.

[41] The RPD's negative credibility inferences and its dismissal of the DB Letter unduly coloured its analysis of the Applicant's evidence regarding her nationality. The RPD ignored the fact that Dejinta Beesha, after evaluating the Applicant, concluded that she is a Somali national. The RPD raised no concerns with the content of the DB Letter (other than the procedural inconsistency) and did not dispute the expertise of Dejinta Beesha in performing such an evaluation.

[42] The RPD's summary dismissal of the Applicant's testimony in support of her nationality is troubling. Any applicant can learn country information for purposes of a refugee claim but the RPD made no findings as to any internal inconsistencies in the Applicant's testimony in this regard. This Court addressed the issue of country knowledge in *Omar v Canada (Minister of Citizenship and Immigration)*, 2017 FC 20 (at para 19):

In this case, the RPD did not find Mr. Omar's evidence to be wholly lacking in credibility. Instead, it found that much of it should be given little weight. This determination was heavily influenced by the RPD's general assessment of Mr. Omar's credibility. I am not persuaded that there was no credible evidence upon which Mr. Omar's refugee claim could potentially succeed. His knowledge of Somalia, his facility with the language, and the identity witness were all potentially capable of establishing that he was a Somali national.

(4) Conclusion

[43] The Applicant's failure to provide any documentation establishing her personal identity in light of the planned nature of her departure from Somalia and her subsequent journey to Canada is a significant issue in her claim. This is not a case involving an individual fleeing an immediate threat of persecution. The RPD made a number of discrete findings in its rejection of the Applicant's explanation for her lack of documentation. As a whole, the reasons given by the RPD are not specious nor are they inconsistent with the evidence in the record. The Applicant provided no identity documents and no ancillary documents or witnesses as to her personal identity. Her explanations were considered by the RPD and discounted. They were not ignored. The RPD erred in its assessment of the Applicant's nationality and tribe. However, the RPD's finding that the Applicant had not established her personal identity was reasonable.

B. *Was the RPD's treatment of the DB Letter procedurally fair?*

[44] The Applicant submits that the RPD's treatment of the DB Letter was procedurally unfair. She states that her counsel provided the RPD with an explanation as to why there was an inconsistency between the two versions of the DB Letter in the description of the process used to evaluate the Applicant. The RPD indicated it understood the explanation and then discounted the DB Letter due to the inconsistency.

[45] The Respondent concedes that the RPD's treatment of the two versions of the DB Letter was wrong. The Respondent submits that there is no evidence that this error extended to any other findings based on the DB Letter.

[46] As stated above, I agree with the parties that the RPD erred in its treatment of the DB Letter. The RPD's decision to give no weight to the DB Letter was unreasonable. However, the RPD's error was not a breach of procedural fairness. The Applicant cites the prior cases of *Buwu v Canada (Citizenship and Immigration)*, 2013 FC 850 [*Buwu*] and *Garcia v Canada (Minister of Citizenship & Immigration)*, 2011 FC 1368 [*Garcia*], in support of her argument.

[47] In *Buwu*, the RPD stated that it understood the applicant's explanation of an issue and then made a negative credibility finding. This was one element of an RPD decision that was rife with clear errors. The Court made no specific finding of procedural fairness in relation to this issue, treating it as one factor that rendered the RPD's decision "unfair, unsafe and unreasonable".

[48] In *Garcia*, this Court found that the applicant in the case should have been given an opportunity to explain an apparent contradiction between the Spanish version of a psychological report and the translation before the RPD. The applicant was not afforded the opportunity to do so which breached her right to procedural fairness. In the present case, the contradiction between the two versions of the DB Letter was raised during the hearing before the RPD and the Applicant was given a full opportunity to explain the contradiction. The fact that the RPD failed to state in the hearing that it did not accept the explanation was not a breach of the Applicant's right to procedural fairness. I find no error in the content or treatment of the procedural rights afforded to the Applicant.

C. *No credible basis*

[49] The RPD may make a finding that there is no credible basis for a refugee claim pursuant to subsection 107(2) of the IRPA if “there was no credible or trustworthy evidence on which it could have made a favourable decision”.

[50] The Applicant submits the RPD conflated its credibility findings on discrete aspects of the claim with a finding of no credible basis. She argues that a negative credibility finding is not synonymous with a finding of no credible basis (*Pournaminivas v Canada (Citizenship and Immigration)*, 2015 FC 1099). The Applicant submits that the RPD did not give proper consideration to the DB Letter or to her testimony demonstrating knowledge of Somali history, culture, geography and politics.

[51] The Respondent submits that this Court has held that even where there is some credible or trustworthy evidence, the RPD can nonetheless making a finding of no credible basis if the evidence is insufficient to sustain a positive determination of an applicant’s refugee claim (*Naeem v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1134). The Respondent submits that, as the Applicant failed to establish her identity, the most basic component of a refugee claim, the RPD reasonably found there was no credible basis for her claim.

[52] A finding of no credible basis has significant consequences for an applicant. It precludes the applicant’s right of appeal to the Refugee Appeal Division and removes the automatic stay of removal if an application for judicial review is made. The RPD must consider whether there is any trustworthy documentary or other credible evidence in support of the Applicant’s claim

before making such a finding. The leading case interpreting subsection 107(2) of the IRPA is *Rahaman v Canada (Minister of Citizenship & Immigration)*, 2002 FCA 89 [*Rahaman*] (at paras 28-30) (the decision references subsection 69.1(9.1) which has been renumbered as subsection 107(2) but the wording is identical):

Moreover, the wording of subs. 69.1(9.1) provides that a "no credible basis" finding may only be made if there was no credible or trustworthy evidence on which the Board member could have upheld the claim. In other words, the Board member may not make a "no credible basis" finding if there is credible or trustworthy evidence before it that is capable of enabling the Board to uphold the claim, even if, taking the evidence as a whole, the Board decides that the claim is not established.

However, as MacGuigan J.A. acknowledged in *Sheikh*, supra, in fact the claimant's oral testimony will often be the only evidence linking the claimant to the alleged persecution and, in such cases, if the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim. Because they are not claimant-specific, country reports alone are normally not a sufficient basis on which the Board can uphold a claim.

On the other hand, the existence of some credible or trustworthy evidence will not preclude a "no credible basis" finding if that evidence is insufficient in law to sustain a positive determination of the claim. Indeed, in the case at bar, Teitelbaum J. upheld the "no credible basis" finding, even though he concluded that, contrary to the Board's finding, the claimant's testimony concerning the intermittent availability of police protection was credible in light of the documentary evidence. However, the claimant's evidence on this issue was not central to the Board's rejection of his claim.

[53] This Court recently considered a finding of no credible basis by the RPD in a case in which the applicant had failed to establish his identity. In *Mohamed v Canada (Minister of Citizenship and Immigration)*, 2017 FC 598, the Court stated (at para 36):

While there may be cases where the RPD can reasonably conclude that the claimant has failed to establish identity and that there is no credible basis for the claim, the finding must, in my view, still be

consistent with *Boztas*, *Levario* and *Rahamin*. For instance, in *Mahdi*, Justice Phelan found that the RPD erred in making a no credible basis finding after finding the applicant had failed to produce sufficient credible evidence of identity. So did Justice Boswell in *Pournaminivas v Canada (Citizenship and Immigration)*, 2015 FC 1099, where he concluded that the RPD's negative credibility findings were reasonable but that a no credible basis finding was not.

[54] In this case, the RPD provided no discussion or analysis of its finding that there was no credible basis for the Applicant's claim. In order to properly make a finding that limited the Applicant's subsequent procedural rights, the RPD, as a matter of fairness, was required to do so. While I have found that the RPD's decision that the Applicant failed to establish her identity was reasonable, the RPD clearly erred in its consideration of the DB Letter which affected its assessment of the Applicant's nationality and her membership in the Yibir clan. The RPD also drew certain negative credibility inferences regarding the Applicant's testimony which were unfounded although they did not render the decision as a whole unreasonable. In these circumstances, the RPD's finding of no credible basis for the Applicant's claim was unreasonable.

#### IX. Remedies

[55] The application for judicial review is allowed in part. The RPD's finding of no credible basis is set aside and this issue alone is remitted to a differently constituted panel of the RPD for redetermination.

[56] No question for certification was proposed and no issue of general importance arises on the record.



**JUDGMENT in IMM-4513-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed in part. The Refugee Protection Division's [RPD] finding of no credible basis is set aside and this issue alone is remitted to a differently constituted panel of the RPD for redetermination. No question is certified.

"Elizabeth Walker"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4513-17

**STYLE OF CAUSE:** SACAADA MAHAMAD HADI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 19, 2018

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** JUNE 7, 2018

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